



**State of New Jersey**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**DIVISION OF HAZARDOUS WASTE MANAGEMENT**

CN 028  
 Trenton, N.J. 08625-0028  
 (609) 633-1408  
 Fax # (609) 633-1454

IN THE MATTER OF  
 THE SANDVIK SITE AND  
 SANDVIK, INC.  
 Respondent

:  
:  
:

ADMINISTRATIVE  
 CONSENT  
 ORDER

This Administrative Consent Order is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP" or the "Department") by N.J.S.A. 13:1D-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. and duly delegated to the Assistant Director for the Responsible Party Cleanup Element of the Division of Hazardous Waste Management pursuant to N.J.S.A. 13:1B-4.

#### FINDINGS

1. Sandvik, Inc., a Delaware corporation, (hereinafter "Sandvik") owns and operates a tool manufacturing facility located at its principal business address at 1702 Nevins Road, Fair Lawn, Bergen County, New Jersey, at a location designated on the municipal tax map of the Borough of Fair Lawn as Block 4902, Lot 2 (hereinafter "the Site").

2. Sandvik is one of several manufacturers located in an industrial area of Fair Lawn. The Site, comprised of approximately 10 acres, consists of two (2) buildings which are used by Sandvik for manufacturing and as office space. The Site is bounded by Nevins Road to the north, McBride Avenue to the west, Fisher Scientific, Inc. to the east and the Henderson Brook to the south.

3. Since approximately 1955, Sandvik has been a manufacturer of various types and sizes of cutting tools. In its manufacturing processes Sandvik has used and continues to use, organic solvents including but not limited to 1-1-1-trichloroethane. Hazardous substances generated from Sandvik's manufacturing processes including spent organic chemicals were and are currently stored in drums at drum storage areas in the rear of the buildings identified in paragraph 2 above and then removed off-site. Prior to 1984, Sandvik stored waste oil, a hazardous substance, in a 4,000 gallon



underground waste oil tank. The tank was removed in 1984 and since then waste oil has been manifested off-site.

4. In mid-1978, the Department sampled a private non-potable well located in the vicinity between the Erie Lackawanna Railroad and McBride Avenue in the Borough of Fair Lawn and within approximately 1/4 mile of the Site. The ground water from this well was found to contain the following volatile organic chemicals: chloroform, 1,1,2 trichloroethylene, 1,1,2 trichloroethane, dibromochloromethane, carbon tetrachloride, 1,1,1 trichloroethane and 1,1,2,2 tetrachloroethylene. As described in paragraph 10 below, Sandvik has confirmed the presence of chloroform, carbon tetrachloride, 1,1,2-trichloroethane and 1,1,1-trichloroethane in the ground water at the Site.

5. In October of 1978, the Borough of Fair Lawn sampled the water from three (3) of its municipal potable wells located within a mile of the private non-potable well identified in paragraph 4 above. The following volatile organic chemicals were present: bromodichloromethane, 1,1,1 trichloroethane, 1,1,2 trichloroethane, chloroform, 1,1 dichloroethane, carbon tetrachloride, trichloroethylene, tetrachloroethylene and methylene chloride. The location of these contaminated potable wells are in the Cadmus wellfield located approximately one mile in a southerly direction from the Site and the Westmorland wellfield located within a mile in a southwesterly direction from the Site.

6. From March through May of 1979, the Department conducted an industrial survey in the Borough of Fair Lawn in the area of the contaminated potable wells described in paragraph 5 above. The purpose of this survey was to identify industries using volatile organic chemicals whose handling, storage or disposal of such chemicals may have contributed to the contamination of the Borough of Fair Lawn's municipal potable wells. Based on the results of the survey, Sandvik, because of its manufacturing practices described in paragraph 3 above, was identified as a potential source of the volatile organic contamination of the potable wells referenced in paragraph 5 above.

7. In an August 11, 1981 letter to the Department, Sandvik indicated that some of Sandvik's drummed manufacturing process waste may have been buried beneath the south eastern portion of the Site's rear parking lot.

8. Beginning in late 1981, as a result of the events described in paragraphs 5, 6 and 7 above, Sandvik initiated a hydrogeologic investigation of its Site. The investigation included soil sampling, monitor well installation and ground water sampling, a metal detection survey and an excavation survey.

9. In October of 1982, NJDEP sampled the ground water which had accumulated in the footing drain sump pit of Sandvik's manufacturing building identified in paragraph 2 above. The following volatile organic chemicals were found to be present: 1,1,1 trichloroethane, 1,1 dichloroethane, tetrachloroethylene and trichloroethylene.

10. Data obtained by Sandvik from its hydrogeologic investigation referenced in paragraph 8 above, confirmed that contamination was originating from several areas at the site where Sandvik had discharged pollutants and hazardous substances. These areas included a waste burial area referenced in paragraph 7 above, a solvent transfer area, the underground waste oil tank referenced in paragraph 3 above, and drum storage areas at the facility referenced in paragraph 3 above. The data indicated that the following volatile organic chemicals were found to be present in the soil: benzene, chlorobenzene, chlorodibromomethane, chloroform, dichlorobromomethane, 1,1 dichloroethane, 1,2 dichloroethane 1,1 dichloroethylene, ethylbenzene, methylene chloride, tetrachloroethane, tetrachloroethylene, 1,1,1 trichloroethane, 1,1,2 trichloroethane, trichloroethylene, and toluene.

11. In September of 1983, the Fair Lawn Municipal Wells Site (hereinafter "the Superfund site") was placed on the National Priorities List of superfund sites by the United States Environmental Protection Agency (hereinafter "USEPA") pursuant to the requirements of the Comprehensive Environmental Responsibility Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq., P.L. 96-510 (hereinafter "CERCLA").

12. As a result of the inclusion of the Fair Lawn Municipal Wells site to the Superfund list, Sandvik was named by the Department and the USEPA as a responsible party in the contamination of the Superfund site and thereafter, Sandvik entered into an Administrative Consent Order on March 21, 1984 (hereinafter "the 1984 ACO") with the Department.

13. The 1984 ACO required Sandvik to effect source control measures, including the removal of the underground oil tank and of contaminated soil. As required pursuant to the 1984 ACO, Sandvik performed ground water monitoring of eleven (11) on-site monitor wells and monitoring of the site sump pit identified in paragraph 9 above. Monitoring of the ground water monitor wells and the sump pit continues to be performed on a quarterly basis by Sandvik.

14. Since approximately July of 1984, Sandvik has conducted periodic sampling of the ground water. Sandvik's sampling reveals that the following hazardous substances and pollutants are in the ground water at the Site:

- Acrolein
- Benzene
- Carbon tetrachloride
- Chlorobenzene
- Chloroethane
- Chloroform
- 1,1-Dichloroethane
- 1,2-Dichloroethane
- 1,1-Dichloroethylene
- trans 1,2-Dichloroethylene
- trans 1,3-Dichloropropylene
- Methylene Chloride
- Tetrachloroethylene

Toluene  
1,1,1-Trichloroethane  
1,1,2-Trichloroethane  
Trichloroethylene  
Trichlorofluoromethane  
Vinyl Chloride

15. A review by the NJDEP of the ground water data referenced in paragraph 14 above, indicates that complete source removal has not yet been achieved by Sandvik and that continuing sources of ground water contamination may be present at, but not limited to, the following areas of the Site which are referenced in "Attachment A", which is attached hereto and made a part hereof:

- a. The area adjacent to the south wall of the manufacturing building, indicated as "Area A"; and
- b. The area adjacent to the east wall at the southeast corner of the manufacturing building indicated as "Area B"; and
- c. The area east and south of MW5D indicated as "Area C".

16. The volatile organic chemicals referenced in paragraph(s) 3, 4, 5, 9, 10 and 14 above are hazardous substances pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b(k).

17. The hazardous substances referenced above were discharged by Sandvik and continue to discharge into the waters and onto the lands of the State of New Jersey in violation of the Spill Compensation and Control Act, specifically N.J.S.A. 58:10-23.11c.

18. The volatile organic chemicals referenced in paragraphs 3, 4, 5, 10 and 14 above are pollutants pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-3n.

19. Sandvik discharged the pollutants referenced above onto the lands and into the waters of the State of New Jersey in violation of the Water Pollution Control Act, specifically N.J.S.A. 58:10A-6.

20. To date, Sandvik has not fully investigated the contamination at and emanating from the Site.

21. Based on these FINDINGS, the Department has determined that Sandvik has violated the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically N.J.S.A. 58:10A-6, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq., specifically N.J.A.C. 7:14A-1.2(c) and the Spill Compensation and Control Act, 58:10-23.11 et seq. and regulations promulgated pursuant thereto, N.J.A.C. 7:1E-1.1 et seq.

22. To determine the nature and extent of the problem presented by the discharge of pollutants and hazardous substances at the Site and to develop environmentally sound remedial actions, it is necessary to conduct a

remedial investigation and feasibility study of remedial action alternatives (hereinafter "RI/FS") for the Site. To correct the problems presented by the discharge, it is necessary to implement a remedial action plan.

23. To resolve this matter without the necessity for litigation, Sandvik has agreed to conduct an RI/FS and to design and implement a remedial action alternative selected by the Department to remedy all contamination at the Site, emanating from the Site, or which has emanated from the Site.

#### ORDER

NOW THEREFORE IT IS HEREBY ORDERED AND AGREED THAT:

##### I. Reimbursement of Prior Costs

24. Within thirty (30) calendar days after receipt from the Department of a written summary Sandvik shall submit to the Department payment for all unreimbursed costs incurred by the Department to date in connection with the investigation of, and response to, the matters described in the FINDINGS hereinabove, including the costs associated with the preparation of this Administrative Consent Order. Payment of the above amount shall be made by a cashier's or certified check payable to the "Treasurer, State of New Jersey". Payment shall be submitted to the contact listed in paragraph 49 below.

##### II. Remedial Investigation and Cleanup

###### A. Interim Remedial Measures

25. Sandvik shall continue implementation of all Interim Remedial Measures (hereinafter "IRM") undertaken pursuant to the 1984 ACO referenced in paragraph 12 above. This includes the current ground water monitoring program and the reporting requirements associated with it.

###### B. Remedial Investigation

26. Within sixty (60) calendar days after the effective date of this Administrative Consent Order, Sandvik shall submit to the Department a detailed draft Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with the scope of work set forth in Appendices A, B and C, which are attached hereto and made a part hereof.

27. Within thirty (30) calendar days after receipt of the Department's written comments on the draft RI Work Plan, Sandvik shall modify the draft RI Work Plan to conform to the Department's comments and shall submit the modified RI Work Plan to the Department. The determination as to whether or not the modified RI Work Plan, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

28. Upon receipt of the Department's written final approval of the RI Work Plan, Sandvik shall conduct the remedial investigation in accordance with the approved RI Work Plan and the schedule therein.

29. Sandvik shall submit to the Department a draft Remedial Investigation Report (hereinafter "RI Report") in accordance with Appendix A and the RI Work Plan and the schedule therein.

30. If upon review of the draft RI Report the Department determines that additional remedial investigation is required, Sandvik shall conduct additional remedial investigation as directed by the Department and submit a second draft RI Report.

31. Within thirty (30) calendar days after receipt of the Department's written comments on the draft RI Report, Sandvik shall modify the draft RI Report to conform to the Department's comments and shall submit the modified RI Report to the Department. The determination as to whether or not the modified RI Report, as resubmitted, conforms with the Department's comments and is otherwise acceptable by the Department shall be made solely by the Department in writing.

#### C. Feasibility Study

32. Within thirty (30) calendar days after receipt of the Department's written final approval of the RI Report, or as otherwise directed by the Department, Sandvik shall submit to the Department a detailed draft Feasibility Study Work Plan (hereinafter, "FS Work Plan") in accordance with the scope of work set forth in Appendix D, which is attached hereto and made a part hereof.

33. Within thirty (30) calendar days after receipt of the Department's written comments on the draft FS Work Plan, Sandvik shall modify the draft FS Work Plan to conform to the Department's comments and shall submit the modified FS Work Plan to the Department. The determination as to whether or not the modified FS Work Plan, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

34. Upon receipt of the Department's written final approval of the FS Work Plan, Sandvik shall conduct the feasibility study in accordance with the approved FS Work Plan and the schedule therein.

35. Sandvik shall submit to the Department a draft Feasibility Study Report (hereinafter "FS Report") in accordance with Appendix D and the approved FS Work Plan and the schedule therein.

36. Within thirty (30) calendar days after receipt of the Department's written comments on the draft FS Report, Sandvik shall modify the draft FS Report to conform to the Department's comments and shall submit the modified FS Report to the Department. The determination as to whether or not the modified FS Report, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

D. Remedial Action

37. The Department will make the selection of the remedial action alternative based on the criteria set forth in Appendix D, Section I.D.

38. Within sixty (60) calendar days after receipt of the Department's written notification of selection of a remedial action alternative, Sandvik shall submit to the Department a detailed draft Remedial Action Plan in accordance with the scope of work set forth in Appendix E, which is attached hereto and made a part hereof.

39. Within thirty (30) calendar days after receipt of the Department's written comments on the draft Remedial Action Plan, Sandvik shall modify the draft Remedial Action Plan to conform to the Department's comments and shall submit the modified Remedial Action Plan to the Department. The determination as to whether or not the modified Remedial Action Plan, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

40. Upon receipt of the Department's written final approval of the Remedial Action Plan, Sandvik shall implement the approved Remedial Action Plan in accordance with the schedule therein.

E. Additional Remedial Investigation and Remedial Action

41. If at any time prior to Sandvik's receipt of written notice from the Department pursuant to paragraph 92 the Department determines that the criteria set forth in Appendix E (Section I.D.) are not being achieved or that additional remedial investigation and/or remedial action is required to protect human health or the environment, Sandvik shall conduct such additional activities as directed by the Department and in accordance with this Administrative Consent Order.

F. Progress Reports

42. Sandvik shall submit to the Department quarterly progress reports; the first progress report shall be submitted on or before the 30th calendar day of the month following the first full quarter after the effective date of this Administrative Consent Order. Each progress report thereafter shall be submitted on or before the 30th calendar day of the month following the quarter being reported. Each progress report shall detail the activities taken to comply with this Administrative Consent Order and shall include the following:

- a. Identification of the Site and reference to this Administrative Consent Order;
- b. Identify specific requirements of this Administrative Consent Order (including the corresponding paragraph number or schedule) which were initiated during the reporting period;

- c. Identify specific requirements of this Administrative Consent Order (including the corresponding paragraph number or schedule) which were initiated in a previous reporting period, which are still in progress and which will continue to be carried out during the next reporting period;
- d. Identify specific requirements of this Administrative Consent Order (including the corresponding paragraph number or schedule) which were completed during this reporting period;
- e. Identify specific requirements of this Administrative Consent Order (including the corresponding paragraph numbers or schedule) which should have been completed during the reporting period and were not;
- f. An explanation of any non-compliance with any approved work plan(s), schedule(s) or Remedial Action Plan, and actions taken or to be taken to rectify non-compliance;
- g. Identify the specific requirements of this Administrative Consent Order (including the corresponding paragraph number or schedule) that will be initiated during the upcoming reporting period.

### III. Permits

43. This Administrative Consent Order shall not be construed to be a permit or in lieu of a permit for existing or former activities which require permits and it shall not relieve Sandvik from obtaining and complying with all applicable Federal, State and local permits necessary for any future activities which Sandvik must perform in order to carry out the obligations of this Administrative Consent Order.

44. Sandvik shall submit complete applications for all Federal, State and local permits required to carry out the obligations of this Administrative Consent Order in accordance with the approved time schedules.

45. Within thirty (30) calendar days of receipt of written comments concerning any permit application to a Federal, State or local agency, or sooner if required by the permitting agency, Sandvik shall modify the permit application to conform to the agency's comments and resubmit the permit application to the agency. The determination as to whether or not the permit application, as resubmitted, conforms with the agency's comments or is otherwise acceptable to the agency shall be made solely by the agency in writing.

46. The terms and conditions of any such permit or permit modification shall not be preempted by the terms and conditions of this Administrative Consent Order, even if the terms and conditions of any such permit or permit modification are more stringent than the terms and conditions of this Administrative Consent Order. To the extent that the terms and conditions of any such permit or modifications are substantially equivalent to the terms and conditions of this Administrative Consent Order,



Sandvik hereby waives any right it may have to a hearing on such terms and conditions.

#### IV. Project Coordination

47. Sandvik shall submit to the Department all documents required by this Administrative Consent Order, including correspondence relating to force majeure issues, by certified mail, return receipt requested or by hand delivery with an acknowledgement of receipt form for the Department's signature. The date that the Department executes the receipt or acknowledgement will be the date the Department uses to determine Sandvik compliance with the requirements of this Administrative Consent Order and the applicability of stipulated penalties and any other remedies available to the Department.

48. Within seven (7) calendar days after the effective date of this Administrative Consent Order, Sandvik shall submit to the Department the name, title, address and telephone number of the individual who shall be the Sandvik contact for the Department for all matters concerning this Administrative Consent Order. The individual identified in the following paragraph shall be the Department's contact for Sandvik for all matters concerning this Administrative Consent Order.

49. Sandvik shall submit five (5) copies of all documents required by this Administrative Consent Order, unless otherwise directed by the Department, to:

Steven Anderson, Section Chief  
Bureau of Federal Case Management  
Division of Hazardous Waste Management  
New Jersey Department of Environmental Protection  
401 E. State Street, CN028  
Trenton, New Jersey 08625-0028

50. Sandvik shall notify, both verbally and in writing, the contact person listed above at least two weeks prior to the initiation of any field activities.

#### V. Financial Requirements

##### A. Financial Assurance

51. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, Sandvik shall provide to the Department financial assurance in the form of either an irrevocable letter of credit or a performance bond in the amount of seven hundred and fifty thousand dollars (\$750,000). Sandvik shall also establish an irrevocable standby trust fund with an initial deposit of one thousand dollars. The irrevocable letter of credit, the performance bond and the irrevocable trust fund agreement shall meet the following requirements:

##### i. Letter of credit

- a. Is identical to the wording specified in Appendix F for letters of credit, which is attached hereto and made a part hereof;
- b. Is issued by a New Jersey State or Federally chartered bank, savings bank, or savings and loan association, which has its principal office in New Jersey, unless otherwise approved by the Department; and
- c. Is accompanied by a letter from Sandvik referring to the Letter of Credit by number, issuing institution and date and providing the following information: the name and address of the facility and/or site which is the subject of the Administrative Consent Order and the amount of funds securing the Sandvik performance of all its obligations under the Administrative Consent Order.

ii. Performance Bond

- a. Is identical to the wording specified in Appendix H for performance bonds, which is attached hereto and made a part hereof;
- b. The surety company issuing the performance bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in the most recent version of Circular 570 issued by the U.S. Department of the Treasury, which is published annually on July 1 in the Federal Register; and
- c. Is accompanied by a letter from Sandvik referring to the Performance Bond by number, issuing institution and date and providing the following information: the name and address of the facility and/or site which is the subject of the Administrative Consent Order and the amount of funds securing the company's performance of all its obligations under the Administrative Consent Order.

iii. Standby Trust

- a. Is identical to the wording specified in Appendix G, which is attached hereto and made a part hereof;
- b. The irrevocable standby trust fund may, at the discretion of the Department, be the depository for all funds paid pursuant to a draft by the Department against the letter of credit or payments made under the performance bond as directed by the Department;
- c. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency;
- d. Is accompanied by an executed certification of acknowledgement that is identical to the wording specified in Appendix G.

52. Sandvik shall establish and maintain the standby trust fund until terminated by the written agreement of the Department, the trustee and Sandvik, or of the trustee and the Department if Sandvik ceases to exist. Sandvik shall maintain the letter of credit or performance bond until the Department provides written notification to Sandvik that the financial assurance is no longer required for compliance with this Administrative Consent Order. In the event that the Department determines that Sandvik has failed to perform any of its obligations under this Administrative Consent Order, the Department may proceed to have the financial assurance deposited into the standby trust; provided, however, that before the Department draws on the letter of credit or makes a claim against the performance bond, the Department shall notify Sandvik in writing of the obligation(s) which it has not performed, and Sandvik shall have a reasonable time, not to exceed thirty (30) calendar days, unless approved in writing by the Department, to perform such obligation(s).

53. At any time, Sandvik may apply to the Department to substitute other financial assurances in a form, manner and amount acceptable to the Department.

**B. Project Cost Review**

54. Beginning three hundred sixty-five (365) calendar days after the effective date of this Administrative Consent Order and annually thereafter on that same calendar day, Sandvik shall submit to the Department a detailed review of all costs required for Sandvik's compliance with this Administrative Consent Order. This cost review shall include a detailed summary of all monies spent to date pursuant to this Administrative Consent Order, the estimated cost of all future expenditures required to comply with this Administrative Consent Order (including any operation and maintenance costs), and the reason for any changes from the previous cost review submitted by Sandvik.

55. At any time after Sandvik submits the first cost review pursuant to the preceding paragraph, Sandvik may request the Department's approval to reduce the amount of the financial assurance to reflect the remaining costs of performing its obligations under this Administrative Consent Order. If the Department grants written approval of the request, Sandvik may amend the amount of the then existing letter of credit or performance bond.

56. If the estimated cost of meeting Sandvik's obligations in this Administrative Consent Order at any time increases to an amount greater than the financial assurance, Sandvik shall, within fourteen (14) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing letter of credit or performance bond so that it is equal to the estimated cost as determined by the Department. Sandvik shall provide the amended financial assurance to the Department within seven calendar days (7) after it has been obtained.

**C. Oversight Cost Reimbursement**

57. Within thirty (30) calendar days after receipt from the Department of an itemized accounting of all costs incurred in connection

with its oversight functions of this Administrative Consent Order for a fiscal year, or any part thereof, Sandvik shall submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" for the full amount of the Department's oversight costs.

D. Stipulated Penalties

58. Upon a demand made by the Department, Sandvik shall pay stipulated penalties to the Department for its failure to comply with any of the deadlines or schedules required by this Administrative Consent Order including those established and approved by the Department in writing pursuant to this Administrative Consent Order. Each deadline or schedule not complied with shall be considered a separate violation, and stipulated penalties shall begin to accrue on the day that performance is due or non-compliance occurs and shall continue to accrue through the final day of correction of the non-compliance. Payment of stipulated penalties shall be made according to the following schedule, unless the Department has modified the compliance date pursuant to the force majeure provisions hereinbelow:

<u>Calendar Days After Due Date</u>		<u>Stipulated Penalties</u>
day	1 - 7	\$ 2,000 per calendar day
	8 - 14	\$ 5,000 per calendar
day	15 - 21	\$10,000 per calendar
day	22 - 28	\$20,000 per calendar
day	29 - over	\$50,000 per calendar

59. Any such penalty shall be due and payable fourteen (14) calendar days following receipt of a written demand by the Department. Payment of stipulated penalties shall be made by a cashier's or certified check payable to the "Treasurer, State of New Jersey".

60. Any payments made by Sandvik pursuant to paragraphs 58 and 59 of this Administrative Consent Order shall be considered civil and/or civil administrative penalties.

61. The payment of stipulated penalties shall not alter Sandvik's responsibility to complete any requirements of this Administrative Consent Order.

VI. Force Majeure

62. If any event as specified in the following paragraph occurs which Sandvik believes or should believe may cause delay in the compliance or non-compliance with any provision of this Administrative Consent Order, Sandvik shall notify the Department in writing within seven (7) calendar days of the delay or anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise

cause or causes of the delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. Sandvik shall take all necessary action to prevent or minimize any such delay.

63. If the Department finds that: (a) Sandvik has complied with the notice requirements of the preceding paragraph and; (b) that any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of Sandvik, the Department shall extend the time for performance hereunder for a period no longer than the delay resulting from such circumstances. If the Department determines that either Sandvik has not complied with the notice requirements of the preceding paragraph, or the event causing the delay is not beyond the control of Sandvik, failure to comply with the provisions of this Administrative Consent Order shall constitute a breach of the requirements of this Administrative Consent Order. The burden of proving that any delay is caused by circumstances beyond the control of Sandvik and the length of any such delay attributable to those circumstances shall rest with Sandvik. Increases in the cost or expenses incurred by Sandvik in fulfilling the requirements of this Administrative Consent Order shall not constitute a Force majeure. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. Force majeure shall not include nonattainment of the goals, standards, guidelines and requirements set forth in the appendicies attached hereto. Force Majeure shall not include contractor's breach unless such breach falls within the requirements of (a), (b), and (c) of this paragraph.

#### VII. Conveyance of Facility

64. Within thirty (30) calendar days of the effective date of this Administrative Consent Order, Sandvik shall record a copy of this Administrative Consent Order with the County Clerk, Bergen County, State of New Jersey.

65. The Site may be freely alienated provided that:

- a. At least ninety (90) calendar days prior to the date of such alienation, Sandvik shall notify the Department in writing of the proposed alienation, the name of the grantee, and a description of the grantor's obligations, if any, to be performed by such grantee.
- b. Any contract entered into by Sandvik to transfer its ownership interest in the Site shall require the grantee to allow the implementation and continuation of all activities and obligations to be conducted pursuant to this Administrative Consent Order, and to allow access to the Site for purposes of such activities and obligations. Sandvik's obligations under this Administrative Consent Order shall continue unless the grantee agrees, to assume Sandvik's obligations and unless the Department agrees in its sole discretion, to permit the grantee to assume the obligations of Sandvik.

- c. Any deed, title, or other instrument of conveyance regarding the Site shall contain a notice that the Site is the subject of this Administrative Consent Order. Any such deed, title or instrument of conveyance shall be subject to the agreement set forth in paragraph 75 below, regarding use of the Site and deed restrictions.

66. Sandvik agrees not to make any use of the Site or take any actions inconsistent with the Administrative Consent Order. Sandvik agrees to the imposition of such use and/or access restrictions as may be deemed necessary by the Department. The use and access restrictions shall run with the land, shall be for the benefit of and enforceable by the Department and the citizens of the State of New Jersey, and shall provide actual and constructive notice to any successor grantee. Sandvik shall record the restrictions with the Bergen County Clerk immediately upon request of the Department that Sandvik do so.

#### VIII. Reservation of Rights

67. The Department reserves the right to unilaterally terminate this Administrative Consent Order in the event Sandvik violates the terms or fails to meet the obligations of this Administrative Consent Order.

68. Nothing in this Administrative Consent Order shall preclude the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against Sandvik for matters not set forth in the Findings of this Administrative Consent Order.

69. This Administrative Consent Order shall not be construed to affect or waive the claims of federal or State natural resources trustees against Sandvik for damages for injury to, destruction of, or loss of natural resources.

70. The Department reserves the right to require Sandvik to take or arrange for the taking of any and all additional measures if the Department determines that such actions are necessary to protect human health or the environment. Nothing in this Administrative Consent Order shall constitute a waiver of any statutory right of the Department to require Sandvik to undertake such additional measures should the Department determine that such measures are necessary.

71. Nothing in this Administrative Consent Order, including the Department's assessment of stipulated penalties, shall preclude the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against Sandvik for violations of this Administrative Consent Order. In any such action brought by the Department under this Administrative Consent Order for injunctive relief, or civil, civil administrative or stipulated penalties, Sandvik may raise, among other defenses, a defense that Sandvik failed to comply with a decision of the Department, made pursuant to this Administrative Consent Order, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If Sandvik is successful in establishing such a defense, Sandvik shall not be liable for stipulated penalties for failure to comply with that

particular requirement of the Administrative Consent Order. Although Sandvik may raise such defenses in any action initiated by the Department for injunctive relief or stipulated penalties, Sandvik shall not otherwise seek review of any decision made or to be made by the Department pursuant to this Administrative Consent Order and under no circumstances shall Sandvik initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Administrative Consent Order.

72. Paragraphs 67 through 71 notwithstanding, Sandvik reserves whatever rights it may have, if any, to contest, after implementation of the remediation for which the financial assurance was used by the Department, that the Department's use of the financial assurance provided pursuant to this Administrative Consent Order was arbitrary, capricious or unreasonable. The Department reserves its right to contest any such action.

#### IX. General Provisions

73. This Administrative Consent Order shall be binding, jointly and severally, on Sandvik, its agents, successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.

74. Sandvik shall perform all work conducted pursuant to this Administrative Consent Order in accordance with prevailing professional standards.

75. Sandvik shall conduct all site operations in accordance with the Health and Safety plan developed for this Site (as set forth in Appendix A). All site activities shall be conducted in accordance with all general industry (29 CFR 1910) and construction (29 CFR 1926) standards of the federal Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, as well as any other State or municipal codes or ordinances that may apply. Special attention shall be given to compliance with those requirements set forth in OSHA's final rule entitled "Hazardous Waste Operations and Emergency Response", Section 1910.120 of Subpart H of 29 CFR (published March 6, 1989, Volume 54, Number 42, Federal Register).

76. In accordance with N.J.S.A. 45:8-45, all plans or specifications involving professional engineering, submitted pursuant to this Administrative Consent Order, shall be submitted affixed with the seal of a professional engineer licensed pursuant to the provisions of N.J.S.A. 45:8-1 et seq.

77. Sandvik shall conform all actions pursuant to this Administrative Consent Order with all applicable Federal, State, and local laws and regulations.

78. All appendices referenced in this Administrative Consent Order, as well as all reports, work plans and documents required under the terms of this Administrative Consent Order that have received approval from the Department, are incorporated into and made a part of this Administrative Consent Order.

79. Each field activity to be conducted pursuant to this Administrative Consent Order shall be coordinated by an on-site professional(s) with experience relative to the particular activity being conducted at the site each day, such as experience in the area of hydrogeology, geology, environmental controls, risk analysis, health and safety or soils.

80. Upon the receipt of a written request from the Department, Sandvik shall submit to the Department all data and information, including technical records and contractual documents, concerning pollution at and/or emanating from the Site, or which has emanated from the Site, including raw sampling and monitor data, whether or not such data and information, including technical records and contractual documents, was developed pursuant to this Administrative Consent Order.

81. Sandvik shall preserve, during the pendency of this Administrative Consent Order and for a minimum of six (6) years after its termination, all data, records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the implementation of work under this Administrative Consent Order, despite any document retention policy to the contrary. After this six year period, Sandvik shall notify the Department within thirty (30) calendar days prior to the destruction of any such documents. If the Department requests in writing that some or all of the documents be preserved for a longer time period, Sandvik shall comply with that request. Upon receipt of a written request by the Department, Sandvik shall submit to the Department all non-privileged records or copies of any such records.

82. Obligations and penalties of this Administrative Consent Order are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of the public health, safety and welfare and are not intended to constitute a debt or debts which may be limited or discharged in a bankruptcy proceeding.

83. In addition to the Department's statutory and regulatory rights to enter and inspect, Sandvik shall allow the Department and its authorized representatives access to the site at all times for the purpose of monitoring Sandvik's compliance with this Administrative Consent Order and/or to perform any remedial activities Sandvik fails to perform as required by this Administrative Consent Order.

84. Sandvik shall not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving Sandvik of its obligation to obtain written approvals as required herein, unless the Department specifically relieves Sandvik of such obligations, in writing in accordance with the following paragraph.

85. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment to this Administrative Consent Order duly executed by Sandvik and the Department.



86. Sandvik hereby consents to and agrees to comply with this Administrative Consent Order which shall be fully enforceable as an Order in the New Jersey Superior Court upon the filing of a summary action for compliance pursuant to N.J.S.A. 13:1D-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

87. In the event that the Department determines that a public meeting concerning the cleanup of the site is necessary at any time, Sandvik shall ensure that Sandvik's appropriate representative is prepared, available, and participates in such a meeting upon notification from the Department of the date time and place of such meeting.

88. Sandvik waives its rights to an administrative hearing concerning the entry of this Administrative Consent Order pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 58:10A-1 et seq.

89. Sandvik agrees not to contest the authority or jurisdiction of the Department to issue this Administrative Consent Order; Sandvik further agrees not to contest the terms or conditions of this Administrative Consent Order, except as to interpretation or application of such terms and conditions in any action brought by the Department to enforce the provisions of this Administrative Consent Order.

90. Sandvik shall provide a copy of this Administrative Consent Order to each contractor and subcontractor retained to perform the work required by this Administrative Consent Order and shall condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this Administrative Consent Order. Sandvik shall be responsible to the Department for ensuring that their contractors and subcontractors perform the work herein in accordance with this Administrative Consent Order.

91. Sandvik shall give written notice of this Administrative Consent Order to any successor in interest within 90 calendar days prior to transfer of ownership of Sandvik's facilities which are the subject of this Administrative Consent Order, and shall simultaneously verify to the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership of Sandvik's facilities.

92. The requirements of this Administrative Consent Order shall be deemed satisfied upon the receipt by Sandvik of written notice from the Department that Sandvik has demonstrated, to the satisfaction of the Department, that the obligations imposed by this Administrative Consent Order have been completed by Sandvik.

93. Sandvik shall submit to the Department, along with the executed original Administrative Consent Order, the appropriate documentary evidence (such as a corporate resolution) that the signatory for Sandvik has the authority to bind Sandvik to the terms of this Administrative Consent Order.

94. All provisions and obligations of the 1984 ACO not inconsistent with this Administrative Consent Order shall remain in full effect.

95. This Administrative Consent Order shall become effective upon the execution by both parties.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Dennis Hart, Acting Assistant Director  
Responsible Party Cleanup Element  
Division of Hazardous Waste Management

Sandvik, Incorporated

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## LIST OF APPENDICES

### APPENDIX

### TITLE

A	REMEDIAL INVESTIGATION SCOPE OF WORK
B	QUALITY ASSURANCE REQUIREMENTS
C	MONITOR WELL SPECIFICATIONS
D	FEASIBILITY STUDY SCOPE OF WORK
E	REMEDIAL ACTION SCOPE OF WORK
F	LETTER OF CREDIT WORDING DOCUMENT
G	STANDBY TRUST WORDING DOCUMENT
H	PERFORMANCE BOND WORDING DOCUMENT

## **APPENDIX A**

### **REMEDIAL INVESTIGATION SCOPE OF WORK**

## REMEDIAL INVESTIGATION SCOPE OF WORK

### I. Requirements of Remedial Investigation

- A. Fully characterize all waste and other materials which are, or may be the source(s) of air, soil, surface water and ground water pollution at the Site
- B. Fully determine the nature, type and physical states of air, soil, surface water and ground-water pollution at the Site, emanating from the Site or which has emanated from the Site
- C. Fully determine the horizontal and vertical extent of pollution at the Site, emanating from the Site or which has emanated from the Site
- D. Fully determine migration paths of pollutants through air, soil, ground water, surface water and sediment
- E. Fully determine impact of the air, soil, surface water and ground water pollution on human health and the environment
- F. Collect, present and discuss all data necessary to adequately support the development of a feasibility study and the selection of a remedial action alternative that will remedy the adverse impacts of the pollution on human health and the environment
- G. Fully analyze present production methodologies for manufacturing, waste generation and environmental control at the site in order to ascertain if any change to such methodologies will decrease the threat to health or environment posed by operations at the Site.

### II. Contents of Remedial Investigation Work Plan

IMPORTANT NOTE: All of the following items shall be included in the Work Plan. If any of the items have previously been submitted or completed, it shall be so stated in the RI Work Plan. For these items, the following shall be included in the RI Work Plan:

- description of items submitted and/or summary of investigation completed
- date(s) of submission or completion
- any known changes or new information developed since submission or completion

The Department will determine the extent to which prior submissions or completions may satisfy specific items required by this Scope of Work.

- A. A statement of requirements for the remedial investigation pursuant to Section I., above
- B. A complete Site history including:
  - 1. an operational and ownership history of the Site since 1940, including for each owner/operator:
    - a. type of operation conducted,
    - b. start and end dates of ownership/operation, and
    - c. current address for owner/operator
  - 2. a list of all raw materials used and products made, past and present, including all pertinent dates
  - 3. a description, including dates, of all past and present disposal practices as well as the location of all known and suspected pollution sources
  - 4. all historical site plans and facility as-built construction drawings available to or in Sandvik's possession
  - 5. all aerial photographs of the Site in possession of or available to Sandvik
  - 6. a Site water budget: input, use, distribution and discharge
  - 7. a background of the Site and surroundings, including but not limited to the following:
    - a. ground water use in area, including well logs and records, and
    - b. boring logs for on-site and nearby construction
  - 8. the identification of any previous ECRA submission for any part of the Site, including:
    - a. ECRA Case No.,
    - b. Date of submission, and
    - c. Current Status
  - 9. a list of all federal and state environmental permits, registrations, licenses, or other approvals applied for, or received or both, at the Site, since 1960 including:
    - a. issuing agency,
    - b. permit number,
    - c. certificate number,
    - d. date of submission,
    - e. date of approval or denial,
    - f. reason for denial (if applicable), and
    - g. expiration date

10. summary of all civil and criminal enforcement actions for violation of environmental laws, including:
    - a. name and address of agency that initiated action,
    - b. date of action,
    - c. section of statute, rule or permit violated,
    - d. type of enforcement action,
    - e. description of violations, and
    - f. resolution or status of violation
  11. a description of all containers, tanks, surface impoundments, landfills, septic systems and any other structure, vessel, contrivance or unit that contain or previously contained hazardous substances or wastes, including:
    - a. type,
    - b. age,
    - c. dimension,
    - d. location, and
    - e. chemical content
  12. a complete and current inventory, description and location of hazardous substances and wastes generated, manufactured, refined, transported, treated, stored, handled or disposed at the Site, above or below ground
  13. a detailed description of any known discharge of hazardous substances or wastes that occurred during current or past operations of the Site and a detailed description of any remedial actions undertaken to handle any such discharge
  14. a list of all current or previously developed data and information concerning pollution at and/or emanating from the Site, or which has emanated from the Site, including raw sampling and monitor data
  15. a summary, review and evaluation of all existing environmental data concerning pollution at the Site, emanating from the Site or which has emanated from the Site
  16. a list of all events which have occurred at the Site, including but not limited to fires, spills, and discharges which have had or potentially may have had an adverse impact on human health or the environment
- C. A detailed schedule for all remedial investigation activities set forth in this Administrative Consent Order and in this Scope of Work including:
1. dates for submission of all required permit applications
  2. dates for start and ending of all field investigations

3. dates for submission of all reports
- D. Curriculum vitae of all key personnel who will participate in the remedial investigation
- E. A field sampling plan including:
1. Waste characterization
    - a. specify number, type and frequency of samples required to accurately characterize all solid waste in tanks, drums, lagoons/impoundments, piles or otherwise at the Site
    - b. explain the type of data which will be collected, justification for collection, and intentions for use of the data
    - c. specify location (on site map) and depths of proposed soil borings, test pits and other sampling points
    - d. specify EPA analytical procedures, including test parameters for waste analyses
    - e. specify chain-of-custody procedures
    - f. specify the name of the State certified laboratory Sandvik will use for analysis of all samples
    - g. specify which quality assurance deliverable requirements will be submitted in accordance with Appendix B, which is attached hereto and made a part hereof
    - h. specify all Federal, State and local permits required
    - i. specify investigation procedures in accordance with the following:
      - i. obtain drilling permits for all soil borings pursuant to N.J.A.C. 58:4A-14
      - ii. install soil borings under direct supervision of a New Jersey licensed well driller and a qualified geologist
      - iii. decontaminate soil boring and sampling equipment between individual samples and borings according to the approved decontamination plan
      - iv. classify waste according to N.J.A.C. 7:26-1 et seq.



- v. use field instrumentation (PID, FID) to analyze soil samples in the field
- vi. analyze waste samples to quantify and determine type of pollutants
- vii. permanently seal all soil borings using a certified well sealer, within 12 hours of completion of each boring
- viii. provide for proper disposal of all materials (eg., cuttings) generated during the soil boring program.

## 2. Soil investigation

- a. specify number, type and frequency of samples required to accurately define the horizontal and vertical extent of soil pollution at the Site, emanating from the Site or which has emanated from the Site
- b. explain the type of data which will be collected, justification for collection and intentions for use of the data
- c. specify location (on site map) and depths of proposed soil borings, test pits and other sampling points
- d. specify EPA analytical procedures, including test parameters for soil analyses
- e. specify chain-of-custody procedures
- f. specify the name of the State certified laboratory Sandvik will use for analysis of all samples
- g. specify which quality assurance deliverable requirements will be submitted pursuant to Appendix B
- h. specify all Federal, State and local permits required
- i. specify investigation procedures in accordance with the following:
  - i. obtain drilling permits for all soil borings pursuant to N.J.A.C. 58:4A-14
  - ii. install soil borings under direct supervision of a New Jersey licensed well driller and a qualified geologist

- iii. decontaminate soil boring and sampling equipment between individual samples and borings according to the approved decontamination plan
- iv. classify soil according to a standard approved system, e.g. Burmeister, Unified, USDA
- v. analyze particle size in laboratory on representative samples to confirm field identification
- vi. use field instrumentation (PID, FID) to analyze soil samples in the field
- vii. analyze soil samples to quantify and determine type of pollutants
- viii. permanently seal all soil borings using a certified well sealer, within 12 hours of completion of each boring
- ix. provide for proper disposal of all materials (eg., cuttings) generated during soil boring program

3. ground-water and potable well investigation

- a. specify number, locations (on site map) and designs of existing and proposed piezometers, monitor wells, industrial wells, potable wells, and other sampling points required to accurately define the horizontal and vertical extent of ground-water pollution at the Site, emanating from the Site or which has emanated from the Site
- b. explain the type of data which will be collected, justification for collection, and intentions for use of the data
- c. specify number, type and frequency of ground-water and potable well samples required to accurately define the horizontal and vertical extent of ground-water pollution at the Site, emanating from the Site, or which has emanated from the Site
- d. specify EPA analytical procedures, including test parameters for ground-water analyses
- e. specify chain-of-custody procedures
- f. specify the name of the State certified laboratory Sandvik will use for analysis of all samples

- g. specify which quality assurance deliverable requirements will be submitted in accordance with Appendix B
- h. specify frequency of synoptic static water level measurements
- i. specify all Federal, State and local permits required
- j. specify investigation procedures in accordance with the following
  - i. have a qualified hydrogeologist with substantial experience in ground-water pollution investigations oversee all site activities
  - ii. obtain well drilling permits pursuant to N.J.S.A. 58:4A-14
  - iii. drill all wells under the direct supervision of a New Jersey licensed well driller and a qualified hydrogeologist
  - iv. install wells in accordance with the monitor well specifications in Appendix D, which is attached hereto and made a part hereof

**IMPORTANT NOTE:**

Improperly constructed monitor wells can compound a pollution problem. Therefore, particular attention shall be given to the details of these specifications. The Department has the authority to shut down a drilling operation which is not adhering to the approved procedures. Data derived from improperly constructed wells shall not be accepted by the Department.

- v. collect split-spoon samples during drilling through the overburden according to ASTM Standard Penetration Methods, ASTM D1586-67, at five-foot intervals, at changes in soil strata, and at all zones which show obvious signs of pollution; with a specific number of drilling locations including continuous split spoon samples to fully define subsurface stratigraphy
- vi. collect sufficient rock core, according to ASTM Diamond Core Drilling Methods, ASTM 2113-70, during the drilling of bedrock monitor wells to obtain a thorough understanding of fracture patterns beneath the site
- vii. rock core run lengths shall be five feet, the core size shall be of "NX" diameter and the following items, at a minimum, shall be included in the log of the core:

- a. lithology
- b. fracture frequency
- c. degree of weathering of rock and fractures
- d. fracture fit
- e. fracture spacing
- f. orientation of fractures
- g. odors and stains present in rock core
- h. % recovery
- i. % RQD

viii. retain all soil and rock samples for future reference and/or analysis

ix. decontaminate drilling and sampling equipment after each drilling and sampling event according to the approved decontamination plan

x. survey all well casings, to the nearest hundredth (0.01) foot above mean sea level and horizontally to an accuracy of one-tenth of a second latitude and longitude by a New Jersey licensed land surveyor

xi. a permanent water-level measurement mark shall be etched onto the well casing to allow for accurate, reproduceable water-level measurements over time

xii. obtain synoptic static water levels to the nearest hundredth (0.01) foot in each monitor well on a regular basis

xiii. collect all ground-water samples pursuant to N.J.A.C. 7:14A-6.12 and NJDEP field procedures manual for water data acquisition

xiv. ground-water samples shall not be collected within 14 calendar days of installation and development of the wells

xv. complete sufficient pumping and packer tests to adequately define aquifer characteristics and develop recovery well design for aquifer restoration

xvi. complete borehole and surface geophysical surveys and/or ground-water modeling as appropriate for the Site

#### 4. surface water and sediment investigation

- a. specify number and type of samples required to accurately determine the horizontal and vertical extent of surface water and sediment pollution at the Site,

emanating from the Site or which has emanated from the Site

- b. explain the type of data which will be collected, justification for collection, and intentions for use of the data
- c. specify location (on Site map) of surface water and sediment sampling points
- d. specify EPA analytical procedures, including test parameters, for surface water and sediment analyses
- e. specify chain-of-custody procedures
- f. specify the name of the State certified laboratory Sandvik will use for analysis of all samples
- g. specify which quality assurance deliverable requirements will be submitted in accordance with Appendix B
- h. specify all Federal, State and local permits required
- i. specify investigation procedures in accordance with the following
  - i. analyze surface water and sediment samples to determine the presence of pollutants in the surface water and sediment according to the approved sampling plan
  - ii. decontaminate sampling equipment between sampling events according to the approved decontamination plan
  - iii. collect surface water and sediment samples in accordance with Field Procedures Manual for Water Data Acquisition, Division of Water Resources, New Jersey Department of Environmental Protection, 1983

5. ambient air monitoring investigation

- a. characterize baseline air quality conditions on and in the vicinity of the Site, and identify present air quality hazards related to the Site
- b. develop a field screening protocol including:
  - i. wellhead monitoring and soil sample emissions analyses

- ii. any specific air quality concerns in the ultimate selection of a remedial alternative
- iii. any adverse air quality impacts that may be associated with the selected remedial action
- iv. enable the implementation of measures to control any adverse air quality impacts that may occur during the course of remedial activities (for example, to design and implement a construction related air program to monitor ambient levels)
- v. specify all Federal, State and local permits required
- vi. specify investigation procedures

G. A site-specific health and safety plan (HASP) based on EPA protocols and in compliance with the requirements of 29 CFR 1910.120 for on-site personnel to minimize the risk of personal injury, illness and potential environmental impairment associated with the site investigation. The HASP shall address those aspects specified in paragraph(i) of 29 CFR 1910.120 entitled "Informational Programs" and shall include:

- 1. listing of personal protective equipment (including respiratory protection) to be used and guidelines for their use, including manufacturer, model, duration of safety period, and any required certification documentation
- 2. listing of safety equipment (including manufacturer, expiration date and model) to be used, such as fire extinguishers, portable eye wash stations, air monitoring equipment, gamma survey instrument, etc. (equipment shall meet OSHA standards or other acceptable industrial standards)
- 3. contingency plans for emergency procedures, spill prevention/response, and evacuation plans
- 4. on-site monitoring for personnel safety (e.g. PID, FID)
- 5. criteria for selecting proper level of personal protection
- 6. medical surveillance program for all on-site personnel involved in remedial investigation
- 7. personal hygiene requirements
- 8. training program including training protocol
- 9. special medical procedures to be available at Site
- 10. telephone numbers of emergency medical facility and personnel

H. An equipment decontamination plan including:

1. list the items to be decontaminated
  - a. drilling equipment, paying particular attention to down hole tools, back of drilling rig and drilling rod racks
  - b. sampling equipment including split spoons, shelly tubes, trowels, spatulas, etc.
  - c. bailers, pumps, hoses, etc.
  - d. personnel clothing
2. procedures for decontamination
  - a. all field sampling equipment shall be laboratory cleaned, wrapped and dedicated to a particular sampling point, unless written permission for field cleaning is obtained from the Department prior to the collection of any samples
  - b. field cleaning of well casing, well screening and drilling equipment shall consist of a manual scrubbing to remove foreign material and steam cleaning inside and out until all traces of oil and grease are removed; these materials shall then be stored in such a manner to preserve it in this pristine condition
  - c. split spoons, bailers, pumps, etc.
    - non-phosphate detergent
    - tap water rinse
    - distilled/deionized water rinse
    - 10% nitric acid rinse\*
    - distilled/deionized water rinse\*
    - acetone (pesticide grade) rinse
    - total air dry or nitrogen blow out
    - distilled/deionized water rinse

\*only if sample is to be analyzed for metals
  - d. hoses
    - steam cleaning

- alconox scrub
- alconox flushing
- e. the chain of custody for sampling events shall begin with the cleaning of the sampler; wherever possible samplers should be numbered in a manner that will not affect their integrity, wrapped in a material (i.e. aluminum foil) that has either been autoclaved or cleaned in the same manner as the sampler
- f. the use of distilled water commercially available in 5 - gallon polyethylene carboys is acceptable for sampler decontamination provided that it is also deionized; use of this water is unacceptable for field and trip blanks unless it has been demonstrated to be analyte free by laboratory analysis

IMPORANT NOTE: Use of dedicated sampling equipment is recommended

### III. Contents and Format of Remedial Investigation Report

#### A. Presentation of data

1. results of all analyses on data sheets supplied by the Department, laboratory data sheets and the required quality assurance documentation
2. summary table(s) of all analyses
3. stratigraphic logs including grain size and field instrument readings detected during drilling for each soil boring and monitor well
4. stratigraphic cross section
5. as-built construction diagrams for each soil boring and monitor well
6. well casing elevations to the nearest hundredth (0.01) foot above mean sea level, taken at the top of casing with locking cap removed
7. depth to ground water to the nearest hundredth (0.01) foot above mean sea level, taken at the top of well casing prior to sampling with cap removed
8. all support data including graphs, equations, references, raw data, etc.

#### B. Maps

1. Site map



- a. property boundaries
  - b. structures and improvements
  - c. surface water bodies
  - d. site and adjacent land use
  - e. topography indicating two-foot contours
  - f. all underground piping and utilities
  - g. all underground tanks, associated piping, lagoons, seepage pits, dry wells, etc.
  - h. scale and orientation
2. sample location map(s)
    - a. monitor well locations and casing elevations
    - b. sample collection locations
    - c. soil boring locations
  3. soil quality contour map and cross section(s)
  4. ground-water elevation contour maps for each aquifer on multiple dates
  5. ground-water quality contour map(s) and cross section(s)
  6. bedrock contour map

C. Discussion of data

1. waste characterization, including degree of hazard and probable quantities of waste, by type
2. description of Site/regional hydrogeology and its relation to migration of pollutants
3. direction and rate of ground-water flow in the aquifer(s), both horizontally and vertically
4. levels of soil, surface water and ground-water pollution as compared to applicable standards pursuant to N.J.A.C. 7:14A, 7:9-4, 7:9-6, and guidelines, or background levels where pertinent
5. extent of soil, surface water and ground-water pollution both on and off-site
6. pollutant behavior, stability, biological and chemical degradation, mobility and any other relevant factors pertinent to the investigation
7. projected rate(s) of pollution movement
8. identification of all pollution sources
9. identification of critical pollutants

D. Assessment of impact of pollution on human health and the environment

1. identification of human receptors in the paths of pollution migration; mobility of pollutants and specific routes to target organs (e.g., liver)
2. identification of the receiving media and/or ecological groups and migration pathways of critical pollutants
3. toxicology of each critical pollutant (acute and chronic toxicity for short- and long-term exposure, carcinogenicity, mutagenicity, teratogenicity, synergistic and/or antagonistic associations, aquatic toxicity, ecological impacts on flora and fauna, etc.)
4. migration potential and environmental fate of each critical pollutant in site-specific terms (e.g., attenuation, dispersion and biodegradation are factors in the ground-water pathway)
5. evaluation of potential for biomagnification and/or bioaccumulation of critical pollutants in the food chain

E. Recommendations for additional investigations

1. waste
2. soil
3. ground water
4. surface water and sediment
5. air

## **APPENDIX B**

### **QUALITY ASSURANCE REQUIREMENTS**

## QUALITY ASSURANCE DELIVERABLE REQUIREMENTS

There are three parts to this Appendix. The first part outlines, according to sample/data type, frequency and use, the approximate percentage of samples for which the Tier I and Tier II quality assurance deliverables are required. The second part is a copy of the Tier I Quality Assurance Deliverable Requirements. The third part is a copy of the Tier II Quality Assurance Deliverable Requirements.

### CRITERIA FOR QUALITY ASSURANCE DELIVERABLE REQUIREMENTS

	<u>TIER I</u>	<u>TIER II</u>
A. <u>Remedial Investigation:</u>		
1. initial RI phase	100%	
2. subsequent RI phases	10%, or minimum of one monitor well, or one sample per sampling event	90%
B. <u>Remedial Action:</u>		
1. monitoring of decontamination effectiveness		
a. initial sampling	100%	
b. subsequent sampling	25%	75%
2. sampling to support proposal to terminate decontamination system	100%	
3. post cleanup/removal soil sampling to determine if any additional cleanup/ removal is required	100%	
C. <u>Other Site Specific Considerations:</u>		
1. <u>potable water</u>		
a. initial sampling	100%	
b. subsequent sampling	25%	75%

## **APPENDIX C**

### **MONITOR WELL SPECIFICATIONS**

## **APPENDIX D**

### **FEASIBILITY STUDY SCOPE OF WORK**

## FEASIBILITY STUDY SCOPE OF WORK

### I. Requirements of Feasibility Study

- A. Identify and list all potentially viable remedial action alternatives for the pollution at the Site, emanating from the Site or which has emanated from the Site
- B. Develop alternatives to incorporate remedial technologies into a comprehensive, site-specific approach
- C. Evaluate and compare remedial action alternatives
- D. Recommend an most environmentally sound remedial action alternative which will, in a timely manner:
  1. cleanup pollution at the Site, emanating from the Site, or which has emanated from the Site
  2. achieve and maintain applicable air, soil, surface water and ground water quality standards (e.g., N.J.A.C. 7:14A-1 et seq., 7:9-4, 7:9-6) established by the Department and if no standards exist, applicable guidelines established by the Department and if no standards or guidelines exist, return the area to background conditions
  3. remedy damage to and provide adequate protection of human health and the environment
  4. provide for implementation of the remedial action in a timely manner

### II. Contents of Feasibility Study Work Plan

- A. A statement of the requirements for the feasibility study pursuant to Section I., above
- B. A detailed schedule for all feasibility study activities including
  1. schedule of key interim dates in feasibility study
  2. dates for submission of all permit applications required for completion of feasibility study; and
  3. date for submitting feasibility study report to the Department
- C. A list of all potentially viable remedial action alternatives to be considered
- D. A presentation of initial screening procedures in accordance with the following:

1. screen all potentially viable remedial action alternatives to narrow the list of potential alternatives for further detailed analysis
  2. initial screening criteria
    - a. environmental and human health impacts
    - b. engineering feasibility and reliability
  3. all alternatives that are capable of remediating the environmental and human health concerns at and/or emanating from the Site shall be retained
- E. A presentation of characteristics to be used to describe remedial action alternatives remaining after initial screening in accordance with the following:
1. describe appropriate treatment and disposal technologies, as well as any permanent facilities required
  2. specify engineering considerations required to implement the alternative (e.g., treatability study, pilot treatment facility, additional studies needed to proceed with final remedial design)
  3. describe environmental and human health impacts and propose methods for mitigating or eliminating any adverse impacts
  4. describe operation and maintenance/monitoring requirements of the completed remedy
  5. describe off-site disposal needs and transportation plans
  6. describe temporary storage requirements
  7. describe requirements for health and safety plans during remedial implementation (including both on-site and off-site health and safety considerations)
  8. describe how the alternative could be phased into individual operable units, including how various components of the remedy could be implemented individually or in groups resulting in a functional phase of the overall remedy
  9. describe how the alternative could be segmented into areas to allow implementation of differing phases of the alternative
  10. describe how alternatives could be combined to create more effective alternatives
  11. describe which Federal, State and local permits would be necessary for each alternative identified and outline the



information necessary for the development of each of the permit applications

12. describe the time required for implementation, including significant interim dates

F. A detailed discussion of procedures to evaluate and compare the remedial action alternatives that remain after the initial screening in accordance with the following:

1. evaluate each alternative in accordance with the requirements referenced in I.D., above, and the following characteristics:
  - i. level of cleanup achievable
  - ii. time to achieve cleanup
  - iii. feasibility
  - iv. implementability
  - v. reliability
  - vi. ability to minimize adverse impacts during action
  - vii. ability to minimize off-site impacts caused by action
  - viii. useability of ground water after implementation of alternative
  - ix. useability of surface water after implementation of alternative
  - x. useability of Site after implementation of alternative
  - xi. legal constraints
2. compare each alternative in accordance with the requirements and characteristics identified in II.F.1 above

G. Presentation of procedure concerning recommendation of remedial action alternative in accordance with the following:

1. based on the detailed evaluation process, recommend an environmentally sound remedial action alternative which will, in the most timely manner, meet the requirements in Section I.D. above
2. prepare a detailed rationale for recommending the remedial action alternative, stating the advantages over other alternatives considered
3. prepare a conceptual design of the recommended alternative including:
  - a. engineering and hydrogeologic approaches
  - b. implementation schedules
  - c. any special implementation requirements
  - d. applicable design criteria

- e. preliminary Site layout(s)
- f. operation and maintenance requirements
- g. safety plan(s)
- h. curriculum vitae of all key personnel who will participate in the implementation of the approved feasibility study

### III. Content of Feasibility Study Report

- A. Detailed discussion of initial screening of remedial action alternatives according to the approved FS Work Plan
- B. Detailed description of remedial action alternatives that remain after initial screening according to the approved FS Work Plan
- C. Detailed evaluation and comparison of remedial action alternatives based on the descriptions presented pursuant to the approved FS Work Plan
- D. Recommendation of and rationale for the most environmentally sound remedial alternative which meets the requirements in Section I. D. above, in the most timely manner and according to the approved FS Work Plan
- E. Conceptual design of recommended remedial alternative
- F. List of all references used in feasibility study

## **APPENDIX E**

### **REMEDIAL ACTION SCOPE OF WORK**

## REMEDIAL ACTION SCOPE OF WORK

- I. Detailed Engineering Design
- II. Schedule for Construction, Operation and Maintenance; and Plan for Satisfaction of Permitting Requirements
- III. Operation, Maintenance, Monitoring and Reporting Requirements
- IV. Performance Evaluation
  - A. The selected remedial action alternative shall meet or exceed the Requirements of the Feasibility Study in Appendix E, Section I.D.
  - B. Procedure
    1. during implementation of ground-water aspect of the alternative, the recovery wells' zone of capture shall adequately be recovering all polluted ground water
      - a. adequate performance evaluation monitoring
      - b. submission of monitoring data
        - i. ground-water quality contour map(s)
        - ii. ground-water elevation contour map(s)
        - iii. time/concentration graphs for all recovery wells and all monitor wells
        - iv. time/volume pumped per month histogram for all recovery wells
    2. post cleanup sampling
      - a. soil
      - b. ground water
      - c. surface water and sediment
- V. Complete and Detailed Cost Estimate
- VI. Curriculum vitae of all key personnel who will participate in the implementation of the Remedial Action Plan.

**APPENDIX F**

**LETTER OF CREDIT WORDING**

\_\_\_\_\_, 19\_\_

Commissioner  
NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
CN 402  
Trenton, New Jersey 08625

Attention: Chief, Bureau of Budget and Accounting

RE: Administrative Consent Order, date executed  
Division  
site and location (include street address  
lot(s) and block(s)  
municipality and county)

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_  
in your favor, at the request and for the account of \_\_\_\_\_ company name and  
address \_\_\_\_\_ up to the aggregate amount of  
\_\_\_\_\_ amount written out \_\_\_\_\_ U.S. Dollars ( \$ \_\_\_\_\_ amount \_\_\_\_\_ ),  
available upon presentation by you of:

- (1) Your sight draft, bearing reference to this letter of credit  
No. \_\_\_\_\_, and
- (2) Your signed statement reading as follows: "I certify that  
the amount of the draft is payable pursuant to the terms and  
provisions of the \_\_\_\_\_, 19\_\_ Administrative Consent  
Order executed by the New Jersey Department of Environmental  
Protection and company in order to remedy contamination  
identified at site and location .

This letter of credit is irrevocable and issued for a period of at  
least one (1) year. This letter of credit is effective as of ( date ) and shall expire on ( date at least one year later ), but such expiration date shall be  
automatically extended for a period of ( at least one year ) on ( date ) and on each successive  
expiration date, unless, at least 120 calendar days before the current  
expiration date, we notify both you and company by certified mail that  
we have decided not to extend this letter of credit beyond the current  
expiration date. In the event you are so notified, any unused portion of  
the credit shall be available upon presentation of your sight draft for 120  
calendar days after the date of receipt by both you and company ,  
as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with  
the terms of this credit, we shall duly honor such draft upon presentation

to us, and we shall deposit the amount of the draft directly into the  
standby trust fund of  
company in accordance with your instructions.

This letter of credit is subject to [insert "the most recent edition of  
the Uniform Customs and Practice for Documentary Credits, published by the  
International Chamber of Commerce," or "the Uniform Commercial Code"]

Very truly yours,

[Name of Issuing Bank]  
[Signature and Title of Official]  
[Date]

**APPENDIX G**

**STANDBY TRUST AGREEMENT WORDING**



## TRUST AGREEMENT

Trust Agreement, "Agreement", entered into as of \_\_\_\_\_ (date) by and between \_\_\_\_\_ company known as "Grantor" and \_\_\_\_\_ issuing institution the "Trustee".

Whereas, the New Jersey Department of Environmental Protection, "NJDEP", an agency of the State of New Jersey, has entered into an Administrative Consent Order with Grantor dated \_\_\_\_\_, 19\_\_, to cleanup contamination identified at \_\_\_\_\_ site and location, a copy of which is annexed hereto as Schedule "A", pursuant to which Grantor is obligated to establish a trust fund to assure the availability of funds to secure the performance of Grantor's obligations under that Administrative Consent Order.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

### Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means \_\_\_\_\_ company who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee, who has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency. The name, address, and title of the Trustee is:  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (c) The term "Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection.
- (d) The term "Beneficiary" means the New Jersey Department of Environmental Protection.
- (e) The term "NJDEP" means the New Jersey Department of Environmental Protection.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule "A".

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the

property, which is acceptable to the Trustee, described in Schedule "B", attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as herein provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment for Performance of Administrative Consent Order

The Trustee shall make payment from the Fund as the NJDEP Commissioner shall direct, in writing, to provide for the payment of the costs of performing Grantor's obligations under the \_\_\_\_\_, 19\_\_ Administrative Consent Order (annexed hereto as Schedule "A"). The Trustee shall reimburse the Grantor or other persons, as specified by NJDEP, in such amounts as the NJDEP shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts, as the NJDEP specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund, as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his/her duties with respect to the Trust fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;
- (b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person or to deposit or arrange for the deposit of any securities issued by the United States Government or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all time show that all securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 calendar days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 calendar days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 calendar days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 calendar days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule "C". The Trustee

shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEP hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement, as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with this Agreement. The Trust shall be indemnified and saved harmless by the Grantor or the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date first above written:

---

(Signature of Grantor/Title)

ATTEST:

---

[Title/Seal]

---

(Signature of Trustee)

ATTEST:

---

[Title/Seal]

**SCHEDULE A**

**Instructions to the Grantor:**

**Include here a copy of the Administrative Consent Order.**

**SCHEDULE B**

**Instructions to the Grantor:**

Include here the initial amount of money the Administrative Consent Order requires you to deposit in the irrevocable standby trust fund.

\$ \_\_\_\_\_ in cash

\$ \_\_\_\_\_ in securities



## SCHEDULE C

### Instructions to the Grantor:

Include here the required information of your designee for communications with the Trustee.

\_\_\_\_\_  
individual's name \_\_\_\_\_, \_\_\_\_\_ title

\_\_\_\_\_  
company

CERTIFICATION OF ACKNOWLEDGEMENT

State of

County of

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally came  
\_\_\_\_\_  
(name) \_\_\_\_\_ to me known, who being by me duly sworn, did depose and  
say that she/he resides at \_\_\_\_\_, that she/he  
is

\_\_\_\_\_  
(title) \_\_\_\_\_ of \_\_\_\_\_ company \_\_\_\_\_, the corporation described in and  
which executed the Trust Agreement pursuant to the Administrative Consent  
Order dated \_\_\_\_\_, 198\_\_\_\_, that she/he knows the seal of said  
corporation; that the seal affixed to such instruments is such corporate  
seal; that it was so affixed by order of the Board of Directors of said  
corporation, and that she/he signed her/his name thereto by like order.

---

(Notary Public)

## **APPENDIX H**

### **PERFORMANCE BOND WORDING**

PERFORMANCE BOND

RE: ADMINISTRATIVE CONSENT ORDER executed on date by the New Jersey Department of Environmental Protection and COMPANY for the investigation and cleanup of the contaminated site located at (include lot and block numbers, municipality and county)

Date bond executed: \_\_\_\_\_

Effective date of bond: \_\_\_\_\_

Principal: (legal name and business address of owner or operator of the site)

Type of organization: (insert "individual", "joint venture", "partnership" or "corporation")

State of Incorporation: \_\_\_\_\_

Surety(ies): (name(s) and business address(es))

Total sum of bond: \_\_\_\_\_

Surety bond number: \_\_\_\_\_

New Jersey Department of Environmental Protection Contact: (name and address)

KNOW ALL PERSONS BY THESE PRESENTS, THAT WE, the Principal and Surety(ies) hereto, are firmly bound to the New Jersey Department of Environmental Protection, hereinafter "NJDEP", in the above sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporation acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of sum.

WHEREAS, said Principal has entered into an Administrative Consent Order with NJDEP dated \_\_\_\_\_, under which Principal has agreed, among other things, to undertake certain actions in order to comply with the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Solid Waste Management Act, N.J.S.A. 58:10-23.11 et seq., and all obligations set forth by the Administrative Consent Order executed for the above referenced property.

WHEREAS, said Principal is required to provide financial assurance in an amount equal to or greater than the cost estimate for implementation of the obligations set forth by the Administrative Consent Order dated

---

WHEREAS, the condition of this obligation is such that, if Principal shall promptly and faithfully perform its obligations under the Administrative Consent Order, then this obligation shall be null and void; otherwise the surety bond shall remain in full force and effect to assure and guarantee the performance and implementation of all obligations set forth by the Administrative Consent Order for this site.

WHEREAS, said Principal shall establish a standby trust fund as is required by the Administrative Consent Order when a surety bond is used to provide a mechanism for access by NJDEP to all or part of such financial assurance required by the Administrative Consent Order to assure performance of the implementation of all obligations set forth by the Administrative Consent Order.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform its obligations under the Administrative Consent Order, whenever required to do so, regarding each site for which this surety bond guarantees performance, then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the NJDEP that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall either perform the obligations set forth in the Administrative Consent Order or place funds in the amount guaranteed for the investigation and cleanup of the site into the standby trust fund as directed by the NJDEP.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEP contact referenced above; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP, as evidenced by the return receipts, nor shall cancellation occur while proceedings to enforce the terms of the Administrative Consent Order are pending or actions to a violation of the Administrative Consent Order are underway.

The Principal may terminate the bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

In WITNESS WHEREOF, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth below.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and the Surety(ies) and that the wording of this surety bond is identical to the wording required by the Administrative Consent Order dated \_\_\_\_\_.

Principal

(Signature(s))

(Date)

(Name(s))

(Title(s))

(Corporate Seal)

(Name and address)

State of incorporation: \_\_\_\_\_

Liability limit: \_\_\_\_\_

(Signature(s))

(Date)

(Names(s) and title(s))

(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above).

Bond premium: \_\_\_\_\_

